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## **Sander v. Alexander Richardson Invs. United States Court of Appeals For The Eighth Circuit 334 F.3d 712 (Decided July 1, 2003)**

Alissa Amato '05

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party counterclaim against the Ashmans placed the Ashmans' maritime tort claim within the court's jurisdiction as a compulsory counterclaim because the claim arose under the same occurrence or transaction. Therefore, overall the court affirmed the holding of the District Court.

**Tara Beglin**  
**Class of 2005**

### **EXCULPATORY CLAUSE ABSOLVING PARTY FROM ITS OWN NEGLIGENCE HELD VALID**

**An exculpatory agreement that shifted the risk of loss to the boat owner and released the Yacht Club from all liability, including that liability arising from its own negligence will be held valid where the terms of the agreement are clearly and unequivocally defined.**

Sander v. Alexander Richardson Invs.  
United States Court of Appeals For The Eighth Circuit  
334 F.3d 712  
(Decided July 1, 2003)

Appelles filed a negligence claim against the appellant, the Yacht Club of St. Louis ("Yacht Club") after its boats was destroyed in a fire at the club. The Yacht Club argued that the exculpatory clause in the boat owners' slip rental agreement released it from liability even if it was due to the Yacht Club's own negligence. The United States District Court for the Eastern District of Missouri granted recovery to the boat owners. On Appeal the United States Court of Appeals for the Eight Circuit reversed.

Ronald and Martha Jessup owned a houseboat that was kept at the Yacht Club marina. Mr. Jessup noticed a fuel leak near the engine fuel pump and requested the Yacht Club to assist him in the repairs. The Yacht Club then referred Mr. Jessup to Mr. Shulte a maintenance worker for the Yacht Club who installed a new fuel pump. Three days later Mr. Jessup started the engine; shortly after he heard an explosion and watched as flames engulfed the hatch area where the engines were located. Fire engulfed the boat and then spread to other docks in the marina destroying the appelle's boats.

Following the fire, the Jessups brought an action for declaratory judgment in district court seeking to exonerate or limit their liability for all claims arising from the incident. Each of the boat owners filed claims against both Jessups and the Yacht Club, while the Yacht Club and the Jessups filed claims against each other. The claims against the Yacht Club were based on the theory that Mr. Shulte negligently installed the fuel pump which caused the fire, and that the Yacht Club was liable for assuring that Mr. Shulte was qualified to perform the repair, when in fact he was not.

The Yacht Club defended against the boat owners by asserting that an exculpatory clause printed on the back of each boat owner's slip agreement exonerated it from any liability for damages caused by the fire.

In reversing the district court's decision, the Court of Appeals discussed four main issues (1) whether the exculpatory clause is valid, (2) whether the exculpatory

clause was clear, (3) whether the exculpatory clause contravenes public policy, and (4) whether the Yacht Club had stronger bargaining power when it made the contract.

In reviewing the agreement the Court noted that maritime law contracts are construed by giving terms their normal everyday meaning and the terms clearly shifted the risk of loss to the boat owners, so the Court held that the Yacht Club was released from any liability. The exculpatory clause printed on the back of each boat owner's slip agreement stated that all tenants must agree to keep their vessels fully insured, and that the landlord does not carry insurance on the property and will not be responsible for any injuries or property damage, and furthermore, the clause stated that the tenant releases and discharges the landlord from any and all liability for loss, injury, or damages to person or property sustained while in or on the facilities of landlord, including fire. *Sander v. Alexander Richardson Invs.*, 334 F.3d 712, 714 (8th Cir. 2003).

Currently there is a split in Federal Circuit Court jurisprudence questioning whether an exculpatory clause fully absolving a party from liability on account of its own negligence is enforceable. The Eleventh Circuit stated that there must be a deterrent to negligence and a repairer must not be absolved of all liability *Diesel "Repower." Inc. v. Islander Invs. Ltd.*, 271 F.3d 1318, 1324 (11th Cir. 2001). However, the Fifth and Ninth Circuits agree that exculpatory clauses are enforceable even when they completely absolve parties from liability. *Theriot v. Bay Drilling Corp.*, 783 F.2d 527, 540 (5th Cir. 1986); *Royal Ins. Co. of Am. v. S.W. Marine*, 194 F.3d 1009, 1014 (9th Cir. 1999). In the present case the Court of Appeals for the Eighth Circuit held for the appellants, determining that the exculpatory clause was valid and unambiguous. Therefore, the Yacht Club is absolved of all liability.

The court determined that two competing public policy doctrines were at odds with each other: holding parties responsible for their actions by limiting their ability to absolve themselves from liability due to their own negligence versus the liberty to contract. *Sander v. Alexander Richardson Invs.*, 334 F.3d at 716. The court concluded that the highest public policy is found in the enforcement of the contract that was actually formed. *Santa Fe, Prescott, & Phoenix Ry. Co. v. Grant Bros. Const. Co.*, 228 U.S. 177, 188 (1913).

In the past, exculpatory clauses were disfavored in admiralty courts; however today the clauses are enforced because parties have the ability to bargain items within a contract. The court further distinguished those cases that did not allow a release from negligence, stating those cases should be limited to towage contracts because of a desire to discourage negligence by making wrongdoers pay damages; and to protect those in need of goods or services from being pressured by others who have power to drive hard bargains. *Sander v. Alexander Richardson Invs.*, 334 F.3d at 717. In the present case the Court concluded that "within admiralty law, the doctrine prohibiting a party from completely absolving itself from liability for its own negligence is limited to circumstances involving relationships similar to towage agreements, such as bailment, employment, or public service relationship." *Sander v. Alexander Richardson Invs.*, 334 F.3d at 719.

Furthermore, the court held that an "exculpatory clause that absolves a marina from liability for its own negligence is enforceable as long as the parties intent to do so is clear and the clause is not the result of overreaching." *Id.* The court found that the clause was clear and the intent of the agreement was to shift the liability onto the boat owners.

The appellees had the power to bargain with the appellant in order to shift the liability onto the appellant but failed to do so. The evidence further showed there were several other marinas in the area and that the Yacht Club negotiated some terms with other members of club. However, appellees concede that they did not attempt to negotiate any of the terms of the agreement. Therefore, the appellees failed to establish that the exculpatory clause was a result of overreaching.

In sum, the Eighth Circuit concluded the exculpatory clause was unambiguous, valid, and enforceable. Moreover, public policy demands enforcing contracts as written and recognizing a parties' freedom to enter into contracts. *Id.* at 721.

**Alissa Amato**  
**Class of 2005**